



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

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March 28, 2012

President Pamela B. Gann
Claremont McKenna College
Office of the President
500 E. Ninth Street
Claremont, California 91711

Sent via U.S. Mail and Facsimile (909-621-8790)

Dear President Gann:

As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression presented by Claremont McKenna College's (CMC's) restriction of peaceful protest activities during a visit by former Secretary of State Condoleezza Rice.

This is our understanding of the facts based on news accounts in the *Claremont Port Side*; please correct us if you believe we are in error. Secretary Rice was scheduled to speak as part of CMC's Marian Miner Cook Athenaeum speaker series on November 30, 2011. In response, a group of students planned to peacefully protest Rice's lecture by conducting a series of non-disruptive "teach-ins" outside the Athenaeum during her address. The day before the lecture, CMC Vice President for Student Affairs Jefferson Huang announced via email that Rice's lecture would be moved to Ducey Gymnasium due to the "possibility" that many individuals unaffiliated with the Claremont Colleges might join the protest disruptively, and that CMC's outdoor basketball courts would serve as the designated "demonstration zone."

On November 30, the basketball courts were fenced off as a "Protest Area," separating protest participants from the Ducey Gymnasium entrance where attendees entered Rice's lecture. After assembling in the Protest Area, they moved past the fencing closer to the entrance, peacefully engaging event attendees. The protesters remained peaceful and non-disruptive, and they were not required to return to the Protest Area.

FIRE joins the Claremont Colleges Intercollegiate Faculty Council in expressing concern that the Protest Area was erected in the first place. Time and again, courts have determined that to be considered legal, restrictions on the time, place, and manner of expression must be reasonable, content-neutral, and narrowly tailored to serve a substantial governmental interest. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). The generalized concern for order expressed by the “possibility” that many individuals unaffiliated with CMC would join the protest disruptively is neither specific nor substantial enough to justify the erection of a fence to separate protesters from attendees. This is unacceptable at a university bound by California’s “Leonard Law,” which protects the free speech rights of CMC students.

CMC may not preemptively cordon off protesters without any evidence to suggest that they might become disruptive. Please honor the principles elaborated by the Supreme Court of the United States in *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation and quotation marks omitted) that “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools” and that “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’”

FIRE asks that Claremont McKenna College clarify that it will not restrict the exercise of free speech in the future absent a compelling justification that passes constitutional muster. We request a response to this letter by April 18, 2012.

Sincerely,



Peter Bonilla

Assistant Director, Individual Rights Defense Program

cc:

Jefferson Huang, Vice President for Student Affairs, Claremont McKenna College

Shahram Ariane, Director of Campus Safety, Claremont University Consortium

Kim Bruce, Claremont Colleges Intercollegiate Faculty Council

Paul Hurley, Claremont Colleges Intercollegiate Faculty Council

Kerry Karukstis, Claremont Colleges Intercollegiate Faculty Council

Julie Liss, Claremont Colleges Intercollegiate Faculty Council

Lorne Olfman, Claremont Colleges Intercollegiate Faculty Council

Animesh Ray, Claremont Colleges Intercollegiate Faculty Council

Dan Segal, Claremont Colleges Intercollegiate Faculty Council

Condoleezza Rice, Denning Professor in Global Business and the Economy, Stanford Graduate School of Business and Thomas and Barbara Stephenson Senior Fellow on Public Policy, Hoover Institution